

ONEIDA V. LEECH
and **SAMUEL L. LEECH,**

vs.

Defendant.

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) **Civil Action No.** _____
) **Judge** _____
) **Magistrate Judge** _____
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Defendants Synthes USA Sales, LLC and Synthes, Inc. (“Synthes Defendants”), file this Notice of Removal removing this action from the Circuit Court of Dickson County, Tennessee to the United States District Court for the Middle District of Tennessee, Nashville Division, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. In support of this Notice of Removal, Synthes Defendants would show the Court as follows:

2. As more fully set out below, this case is properly removed to this Court pursuant to 28 U.S.C. § 1441 because Synthes Defendants have satisfied the procedural requirements for removal and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332.

I. SYNTHES HAS SATISFIED THE PROCEDURAL REQUIREMENTS FOR REMOVAL.

3. A summons for Synthes USA Sales, LLC was issued on April 12, 2011. On April 18, 2011, Plaintiffs served the Summons and Complaint on National Corporate Research, LTD, an agent for service, via personal service. National Corporate Research, LTD sent the Summons and Complaint to Synthes USA HQ, Inc. on the same date.

4. A summons for Synthes, Inc. was issued on April 12, 2011. On April 14, 2011, the Tennessee Secretary of State served the Summons and Complaint on National Corporate Research, LTD, an agent for service, via certified mail. National Corporate Research, LTD received the Summons and Complaint on April 19, 2011 and sent it to Synthes USA HQ, Inc. on the same date.

5. Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b). Copies of all pleadings, process, and orders served upon Synthes Defendants in this action are attached hereto as collective Exhibit A, including the Complaint and Summons. To Synthes Defendants' knowledge, no further proceedings have been filed in the Circuit Court for Dickson County, Tennessee.

6. The United States District Court for the Middle District of Tennessee, Nashville Division, embraces the locality in which the State Court Action is now pending, making this Court a proper forum pursuant to 28 U.S.C. § 1441(a).

7. Synthes Defendants are the only named defendants in this action. Therefore, Synthes Defendants need not obtain the consent of any unidentified party to remove this action.

8. No previous application has been made for the relief requested herein.

9. Pursuant to 28 U.S.C. § 1446(d), defendant Synthes is filing written notice of this removal with the Clerk of the State Court in which the action is currently pending. Copies of the

Notice of Filing of Removal, together with this Notice of Removal, are being served upon Plaintiffs' counsel pursuant to 28 U.S.C. § 1446(d). (See Exhibit B, attached.)

10. A filing fee of \$350.00 has been tendered to the Clerk of the United States District Court for the Middle District of Tennessee, Nashville Division.

II. REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT MATTER JURISDICTION PURSUANT TO 28 U.S.C. §§ 1332 and 1441.

11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because this is a civil action in which the amount in controversy exceeds the sum of \$75,000, exclusive of costs and interest, and is between citizens of different states.

A. There Is Complete Diversity Of Citizenship.

12. There is complete diversity between Plaintiffs and Synthes Defendants.

13. Plaintiffs allege that they are both citizens of Dickson County, Tennessee (see Compl. ¶ 1.) Plaintiffs do not allege any alternative state of residence; therefore, Plaintiffs are citizens of Tennessee for purposes of determining diversity. 28 U.S.C. § 1332.

14. Synthes USA Sales, LLC is, and was at the time Plaintiffs commenced this action, a limited liability company organized under the laws of the State of Delaware with its principal place of business in Pennsylvania. (See Compl. ¶ 2). Synthes USA Sales, LLC's sole member is Synthes USA HQ, Inc., a corporation organized under the laws of Delaware with its principal place of business in Pennsylvania. Accordingly, Synthes USA Sales, LLC, like Synthes USA HQ, Inc., is a citizen of Delaware and Pennsylvania for purposes of diversity jurisdiction. See 28 U.S.C. § 1332(c)(1); *Delay v. Rosenthal Collins Group, LLC*, 585 F.3d 1003, 1005 (6th Cir. 2009) ("a limited liability company has the citizenship of each of its members").

15. Synthes Inc. is, and was at the time Plaintiffs commenced this action, a corporation organized under the laws of the State of Delaware with its principal place of business

in Pennsylvania. (See Compl. ¶ 3). Synthes, Inc. is, thus, a citizen of the states of Delaware and Pennsylvania for purposes of diversity jurisdiction. 28 U.S.C. § 1332(c)(1) (for diversity of citizenship purposes, “a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business”).

B. The Amount-In-Controversy Requirement Is Satisfied.

16. The amount in controversy exceeds \$75,000 exclusive of interest and costs, as follows:

(a) Plaintiff Oneida V. Leech alleges injuries related to an alleged defect in the “Synthes Dynamic Hip Screw System.” (See Compl. ¶ 17).

(b) Plaintiff Oneida V. Leech seeks damages in the amount of Five Hundred Thousand Dollars (\$500,000.00). (Compl. Prayer for Relief).

(c) Plaintiff Samuel L. Leech alleges that he lost consortium with his wife and was deprived of her services for an extended period of time. (See Compl. ¶ 14)

(d) Plaintiff Samuel L. Leech seeks damages in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00). (Compl. Prayer for Relief).

17. Request for Briefing/Argument. If any question arises regarding the propriety of the removal of this action, the Synthes Defendants respectfully request the opportunity to present a brief and/or oral argument in support of their position that this case is removable.

WHEREFORE, Synthes Defendants respectfully remove this action from the Circuit Court of Dickson County, Tennessee, bearing case number Case No. 22CC-2011-cv-58, to this Court, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.



James M. Doran, Jr. (BPR No. 02368)
Alyssa M. Leffall (BPR No. 026432)
Waller Lansden Dortch & Davis, LLP
Nashville City Center
511 Union Street, Suite 2700
Post Office Box 198966
Nashville, Tennessee 37219-8966
Tel: (615) 244-6380
Fax: (615) 244-6804
E-Mail: james.doran@wallerlaw.com
E-Mail: alyssa.leffall@wallerlaw.com

*Attorneys for Defendants Synthes USA Sales, LLC
and Synthes, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the party below via first class mail postage prepaid on May 12, 2011.

Jim Sowell
118 North Main Street
Dickson, Tennessee 37055

Attorney for Plaintiffs

